appears to be with the principal case. The admission of the parol evidence is justified on the ground that it is not evidence to vary the terms of a written agreement, which is not allowable, but that it is evidence to show there is no operative agreement in force. *McKnight* v. *Parsons,* 136 Ia. 390, 22 L. R. A. N. S. 718; *Burke* v. *Dulaney,* 153 U. S. 228; *Brown* v. *St. Charles,* 66 Mich. 71; *Burns & Smith Lumber Co.* v. *Doyle,* 71 Conn. 742; *Merchants Bank* v. *Luckow,* 37 Minn. 542; *Watkins* v. *Bowers,* 119 Mass. 383; *Beach, Receiver,* v. *Nevins,* 162 Fed. 129, 18 L. R. A. N. S. 288; *Hurt* v. *Ford,* (Mo.) 36 S. W. 671. But there are many states holding contra to the principal case. *Carter* v. *Moulton,* 51 Kan. 9; *Garner* v. *Fite,* 93 Ala. 405; *Stewart* v. *Anderson,* 59 Ind. 375; *Scott* v. *State Bank,* 9 Ark. 36; *Gaar* v. *Louisville Banking Co.,* 74 Ky. 180, 21 Am. R. 209.

CARRIERS—NECESSITY OF NOTICE OF CLAIM UNDER SPECIAL CONTRACT—APPLICABILITY WHERE LIVE STOCK HAS DIED IN TRANSIT.—Plaintiff sued carrier for value of live stock, which died in transit. The shipment was made under a contract stipulating that no recovery could be had, unless notice of claim was given by the consignee or shipper to the carrier at or before the time of delivery. Notice had not been given. *Held,* that the plaintiff could recover, the stipulation not applying to live-stock dying in transit. *Southern Ry. Co.* v. *Bacon* (Tenn. 1913), 159 S. W. 602.

The principal case is one of first impression in this state. Nor has the question been considered often elsewhere. Of the decisions cited by the court to sustain their position, but two are in point, *Kas. & Ry. Co.* v. *Ayres,* 63 Ark. 331, 38 S. W. 515, and *Pierson* v. *No. Pac. Ry. Co.,* 61 Wash. 450, 112 Pac. 509, which follows the former decision without discussion. The other decisions are in cases where the carrier had actual notice of the death of the stock. *L. & N. Ry. Co.* v. *Warfield and Lee,* 6 Ga. App. 550, 65 S. E. 308; *M. K. & T. Ry. Co.* v. *Frogley,* 75 Kas. 440, 89 Pac. 903; and *Patterson* v. *K. & T. Ry. Co.,* 24 Okla. 747, 104 Pac. 31. In fact the rule in Kansas seems to be in direct opposition to that stated in the principal case. *Wichita & Wes. Ry. Co.* v. *Koch,* 47 Kas. 753. As a general rule, such a stipulation as that in the contract in the principal case is considered reasonable and valid, because it tends to prevent injustice by giving the carrier an opportunity to inspect the stock in question before its identity is lost. In accordance with such reasoning, it has been held, under a contract similar to that in the principal case, that where the carrier's agent has removed cattle from the cars, notice of injury is not required. *Baker* v. *Miss. Pac. Ry. Co.,* 34 Mo. App. 98. And where the injury is not apparent, but develops later, notice is not required. 5 Cyc. (2 Ed.) 455. The carrier has an equal opportunity to discover dead stock and apparent injuries, and it seems that the rule that notice is essential to recovery, unless the carrier has actual notice, should apply in both cases.

CORPORATIONS—RIGHTS OF STOCKHOLDERS WHERE THE CORPORATION FRAUDULENTLY DISMISSES A SUIT.—Defendant Rossman, a director of plaintiff company, fraudulently caused stock in said company to be issued to defendant McAlpine and himself. The corporation commenced suit to have the

stock thus issued cancelled. The suit was later dismissed by the corporation in accordance with a collusive agreement with defendants. Certain of the stock-holders seek to intervene and continue the suit. *Held,* the stockholders can intervene, have the dismissal set aside and continue the suit. *National Power & Paper Co.* v. *Rossman et al.* (Minn. 1913), 142 N. W. 818.

The decision here involves the question as to the right of a stockholder to sue in his own name in behalf of himself and the other stockholders for a wrong done to the corporation. As a general proposition where there is an injury to the corporation, the corporation itself is the proper party to bring suit to obtain redress, *Meyers* v. *Bristol Hotel Co.,* 163 Mo. 59, 63 S. W. 96, and the stockholders have no right to intervene on the mere ground that they are stockholders and therefore the necessary parties in interest (*Gunderson* v. *Ill Tr. & Sav. Bk.,* 199 Ill. 422, 65 N. E. 326), and this is true even though the stockholder who brings the suit is the sole owner of all the stock (*Randall* v. *Dudley,* 111 Mich. 437, 69 N. W. 729). It was not until 1855 in this country (*Dodge* v. *Woolsey,* 18 How. (59 U. S.) 331), and 1867 in England (*Atwool* v. *Merryweather,* L. R. 5 Eq. 464) that the right of the stockholder to sue under any circumstances became firmly and definitely established. But it now has become the settled rule in equity that, where the necessary elements are present, the stockholder may sue in his own name and in behalf of himself and the other stockholders. These necessary elements are that the corporation has been requested, but has refused or neglected, to bring the suit, *Perkins* v. *Northern Pac. Ry. Co.,* 155 Fed. 455; *Savings & Trust Co.* v. *Bear Valley Irr. Co.,* 112 Fed. 693; *S. S. of O. of Sitting Hall* v. *Baker,* 134 Ind. 293, 33 N. E. 1128, 20 L. R. A. 210; *Home Min. Co.* v. *McKibben,* 60 Kan. 387, 56 Pac. 756; *Smith* v. *Buckley,* 18 Colo. App. 227, 70 Pac. 958; and demand must be made even though the corporation is dissolved at the time suit is brought, *Dillon* v. *Lee,* 110 Iowa 156, 81 N. W. 245; but demand need not be made where the corporation is controlled through its directors by a rival corporation, *Lowenstein* v. *Diamond Soda Water Mfg. Co.,* 88 N. Y. S. 313, 94 App. Div. 383, or where the situation is such that it could not be expected that the corporation would comply if it were asked, *Tillis* v. *Brown,* 154 Ala. 403, 45 So. 598; *Sheridan Brick Works* v. *Marion Trust Co.,* 157 Ind. 292, 61 N. E. 666, 81 Am. St. Rep. 207; *McCampbell* v. *Fountain Head R. Co.,* 111 Tenn. 55, 77 S. W. 1070, 102 Am. St. Rep. 731. Generally the stockholder must show that he has exhausted all available means of obtaining redress within the corporation itself, *Williams* v. *Erie Mountain Mining Co.,* 47 Wash. 360, 91 Pac. 1091, and that the act of the corporation in refusing amounts to a breach of trust such as neither a majority of the directors nor of the stockholders can ratify or condone, and that the stockholder himself is not guilty of laches, acquiescence or ratification of the acts of the corporation, 2 COOK, CORPORATIONS, (Ed. 6), §§ 646-7, *Kessler* v. *Ensley,* 123 Fed. 546. Almost exactly in point with the principal case are *Eagle Iron Co.* v. *Colyar,* 156 Fed. 954, and *Braham* v. *Gehl Co.,* 132 Wis. 674, 112 N. W. 1098, which hold in effect that where stock has been fraudulently issued, suit commenced by the corporation to cancel it and a dismissal of such suit because of the directors

being controlled by the holders of the stock, a stockholder may exercise the right to have such stock cancelled and may continue the suit commenced by the corporation. The corporation acts in a fiduciary relation toward the stockholders and must act in good faith. The board of directors has no absolute power of disposal of the property and rights of the corporation, but must serve the interests of the corporation in good faith. *Jones* v. *Morrison,* 31 Minn. 140, 16 N. W. 854; *Jamey* v. *Minn. Ind. Exp.,* 79 Minn. 488, 82 N. W. 984, 50 L. R. A. 279; *Wheeler* v. *Bank Building Co.,* 159 Fed. 391, 89 C. C. A. 447, 16 L. R. A. N. S. 892, 14 Ann. Cas. 917.

CORPORATIONS—ULTRA VIRES ACTS—WHO CAN COMPLAIN.—Plaintiff and defendant are both corporations engaged in the business of furnishing water to the same town. Defendant commenced the work of laying certain pipes, and plaintiff, alleging that defendant was thereby exceeding its charter rights, brings this suit for an injunction restraining the defendant from finishing the work. It was found that the defendant had not done, nor did it propose to do, any acts that had been or would be attended with any actual or serious damage to the plaintiff, or would interfere with it in the management and maintenance of its water system. *Held,* the plaintiff is not a proper party to raise the question of whether the defendant is exceeding its charter powers. *New Hartford Water Co.* v. *Village Water Co.* (Conn. 1913), 87 Atl. 358.

Generally, the question of whether a corporation is exceeding its charter powers can be raised only by the stockholders, or by the state, or by parties who have received some special damage by the alleged ultra vires acts, *Houston & T. C. R. Co.* v. *Shuley,* 54 Tex. 125; *Baker* v. *N. W. Loan Co.,* 36 Minn. 185, 30 N. W. 464; *Belchers Sugar Refining Co.* v. *St. Louis Grain Elevator Co.,* 101 Mo. 193, 13 S. W. 822, 8 L. R. A. 801. The principal case raises the question as to when a third party can object. Formerly a corporation could be attacked because of its ultra vires acts by private persons, but there has been a gradual development in the direction of holding that none but the state or a person directly interested in the corporation can question such authority. The doctrine of ultra vires is not favored in law and is never applied where it would defeat the ends of justice or work a legal wrong if such a result can be avoided, *Southern Pac. Co.* v. *U. S.,* 28 Ct. of Cl. Rep. 77, *Burke Etc. Co.* v. *Wells et al.,* 7 Idaho 42, 60 Pac. 87; and as the law stands now, to enable one to raise the question he must prove some actual damage, *De Camp* v. *Dobbins,* 29 N. J. Eq. (2 Stew.) 36; *Erie Ry. Co* v. *Delaware L. & W. R. Co.,* 21 N. J. Eq. (6 C. E. Green) 283; *Camblos* v. *Philadelphia & R. R. Co.,* Fed. Cas. No. 2331. Thus the question cannot be raised by a person not a stockholder, and interested only in competing for wharfage, *New Orleans M. & F. R. Co.* v. *Ellerman,* 105 U. S. 166, 26 L. Ed. 1015, nor can the act of a corporation taking land be questioned by one who has no right to the land himself, *Butte Hardware Co.* v. *Schwab,* 13 Mont. 331, 34 Pac. 24; *Case* v. *Kelly,* 133 U. S. 21, 10 Sup. Ct. 216, 33 L. Ed. 513; the only exception to the rule is where a right is expressly given by statute, *Martindale* v. *Kansas City, St. J. & B. R. Co.,* 60 Mo. 508; *Kimaly* v. *St. Louis K. C. & N. Ry.*